

Loan File Reunderwriting Protocol Status Report

Via ECF (S.D.N.Y. and C.D. Cal.) and Email (D. Kan.)

November 13, 2015

The Honorable Denise L. Cote
United States District Court for the Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

The Honorable John W. Lungstrum
The Honorable James P. O'Hara
United States District Court for the District of Kansas
500 State Avenue, Suite 517
Kansas City, KS 66101

The Honorable George H. Wu
United States District Court for the Central District of California
312 North Spring Street
Los Angeles, CA 90012-4701

Re: *NCUA v. Morgan Stanley & Co.*, No. 13-6705 (S.D.N.Y.) and related actions

Dear Judges Cote, Lungstrum, Wu, and O'Hara:

Pursuant to § (g) of the Loan File Reunderwriting Protocol ("LFRP") (ECF No. 100), and the Courts' July 14, 2014 Order (ECF No. 174) and the Courts' December 12, 2014 Order (ECF No. 230),¹ the parties respectfully submit this status report "as to identification and production by Defendant Groups and third parties of Loan Files and Guidelines for the Sampled Loans, and as to the status of above-described stipulations." As indicated in our submission dated June 26, 2015, the parties have sufficiently completed the processes encompassed by § (g) of the LFRP for the Sampled Loans for all of the RMBS certificates in the actions in the Central District of California and in the Southern District of New York, as well as in the Morgan Stanley, Nomura, Wachovia, RBS, and Novastar actions in the District of Kansas. This status report is limited to the Credit Suisse and UBS (collectively, "Defendants") actions in the District of Kansas for which certain claims were reinstated ("Reinstated Certificates," in contrast to the pre-existing "Original Certificates").²

I. Collection of Loan Files and Guidelines

A. Defendants' Productions of Loan Files and Guidelines. Pursuant to §§ (b) and (c) of the LFRP, Defendants have identified the Loan Files and Guidelines for the Sampled Loans in their possession, custody, or control that they expect to produce to NCUA. With

¹ Unless otherwise noted, ECF references are to *NCUA v. Morgan Stanley & Co.*, No. 13-6705 (S.D.N.Y.).

² Twelve certificates were reinstated against Credit Suisse, and ten certificates were reinstated against UBS. *See NCUA v. UBS Sec., LLC*, 2015 WL 3407863 (D. Kan. May 27, 2015).

respect to both the Original Certificates and the Reinstated Certificates, Defendants reasonably believe that they have produced all Loan Files and Guidelines for the Sampled Loans in their possession, custody, or control that they expect to produce to NCUA.

B. NCUA's Subpoenas for Loan Files and Guidelines. NCUA has issued approximately 65 subpoenas to third parties seeking Loan Files and Guidelines for the Sampled Loans with respect to the Reinstated Certificates. To date, NCUA has collected loan file documents relating to approximately 2,964 of the 3,400 Sampled Loans for the Reinstated Certificates. NCUA has also collected numerous potentially applicable underwriting guidelines. NCUA is processing, Bates stamping (if necessary), and reproducing these documents to Defendants. As of this report, NCUA has produced to Defendants all documents relating to loan files and underwriting guidelines that were produced by third parties on or before November 9, 2015. NCUA continues to meet and confer with third parties regarding outstanding loan files and underwriting guidelines.

C. Defendants' Subpoena for Loan Files and Guidelines. Defendants have not issued subpoenas seeking loan files or underwriting guidelines.

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The Appendix provides the status of the parties' efforts to stipulate to the loan files and underwriting guidelines that have been collected on a security-by-security basis.

II. Stipulations Regarding Loan Files and Guidelines

Pursuant to §§ (e) and (f) of the LFRP, NCUA has proposed loan file and guideline stipulations to Defendants. The Appendix provides the status of these stipulations on a security-by-security basis. NCUA has not proposed stipulations for all of the collected Sampled Loans because it intends to re-underwrite only approximately 100 loans per security. The parties will cooperate in good faith regarding these stipulations and will raise any issues with the Court.

Respectfully submitted,

/s/ David C. Frederick

David C. Frederick
Wan J. Kim
Gregory G. Rapawy
Andrew C. Shen
KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.
Sumner Square
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Tel: (202) 326-7900
Fax: (202) 326-7999
dfrederick@khhte.com
wkim@khhte.com
grapawy@khhte.com
ashen@khhte.com

George A. Zelcs
KOREIN TILLERY LLC
205 North Michigan Avenue, Suite 1950
Chicago, IL 60601
Tel: (312) 641-9750
Fax: (312) 641-9751
gzlcs@koreintillery.com

Stephen M. Tillery
Greg G. Gutzler
Robert L. King
KOREIN TILLERY LLC
505 North Seventh Street, Suite 3600
St. Louis, MO 63101
Tel: (314) 241-4844
Fax: (314) 241-3525
stillery@koreintillery.com
ggutzler@koreintillery.com
rking@koreintillery.com

Erik Haas
Peter W. Tomlinson
Philip R. Forlenza
Henry J. Ricardo
PATTERSON BELKNAP WEBB & TYLER LLP
1133 Avenue of the Americas
New York, NY 10036
Tel: (212) 336-2000
Fax: (212) 336-2222
ehaas@pbwt.com
pwtomlinson@pbwt.com
prforlenza@pbwt.com
hjr Ricardo@pbwt.com

David H. Wollmuth
Frederick R. Kessler
Steven S. Fitzgerald
Ryan A. Kane
WOLLMUTH MAHER & DEUTSCH LLP
500 Fifth Avenue, 12th Floor
New York, NY 10110
Tel: (212) 382-3300
Fax: (212) 382-0050
dwollmuth@wmd-law.com
fkessler@wmd-law.com
sfitzgerald@wmd-law.com
rkane@wmd-law.com

Norman E. Siegel (D. Kan. # 70354)
Rachel E. Schwartz (Kan. # 21782)
STUEVE SIEGEL HANSON LLP
460 Nichols Road, Suite 200
Kansas City, MO 64112
Tel: (816) 714-7100
Fax: (816) 714-7101
siegel@stuevesiegel.com
schwartz@stuevesiegel.com

Attorneys for Plaintiff National Credit Union Administration Board

<p><u>/s/ Richard W. Clary</u> Richard W. Clary Richard J. Stark Michael T. Reynolds Lauren A. Moskowitz Omid H. Nasab CRAVATH, SWAINE & MOORE LLP 825 Eighth Avenue New York, NY 10019 Tel: (212) 474-1000 Fax: (212) 474-3700 rclary@cravath.com rstark@cravath.com mreynolds@cravath.com lmoskowitz@cravath.com onasab@cravath.com</p> <p><i>Attorneys for Defendants Credit Suisse Securities (USA) LLC and Credit Suisse First Boston Mortgage Securities Corp.</i></p>	<p><u>/s/ Scott D. Musoff</u> Jay B. Kasner Scott D. Musoff Robert A. Fumerton Gary J. Hacker SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP Four Times Square New York, NY 10036 Tel: (212) 735-3000 Fax: (212) 735-2000 jay.kasner@skadden.com scott.musoff@skadden.com robert.fumerton@skadden.com gary.hacker@skadden.com</p> <p><i>Attorneys for Defendant UBS Securities, LLC</i></p>

cc: Counsel of Record (via ECF or Email)

Appendix

Credit Suisse (Reinstated Certificates)	ARMT 2006-1 (G2)	ARMT 2006-3 (G1 & G3)	ARMT 2007-2	FMIC 2005-3	HEAT 2005-9	HEAT 2006-7	HEAT 2006-8 (G2)	HEAT 2006-8 (all)	RASC 2007-EMX1	SAST 2006-3
Number of Sampled Loans for Which Loan Files Collected as Reported by NCUA	200/200 (100%)	198/200 (99%)	200/200 (100%)	35/200 (17.5%)	172/200 (86%)	200/200 (100%)	198/200 (99%)	200/200 (100%)	166/200 (83%)	200/200 (100%)
Number of Loan File Stipulations Reached / Stipulations Proposed by NCUA	0/0	0/0	132/135 (97.7%)	0/0	0/0	0/0	0/0	0/0	0/0	0/0
Number of Stipulations Reached as to Guideline and Matrix / Stipulations Proposed by NCUA	0/0	0/0	119/135 (88%)	0/0	0/0	0/0	0/0	0/0	0/0	0/0
Number of Stipulations Proposed by NCUA for Which No Response Has Been Due	0	0	0	0	0	0	0	0	0	0
Number of Sampled Loans for Which Defendant Counter-Proposed a Loan File Stipulation But No Stipulation Yet Reached	0	0	0	0	0	0	0	0	0	0
Number of Sampled Loans for Which Defendant Counter-Proposed a Guideline or Matrix Stipulation But No Stipulation Yet Reached	0	0	2	0	0	0	0	0	0	0

UBS (Reinstated Certificates)	CWHL 2006-OA.5 (G1)	CWHL 2006-OA.5 (G2)	MABS 2006-HE.4	MABS 2006-WMC4	MARM 2006-OA2	MARM 2007-1	MARM 2007-HF1
Number of Sampled Loans for Which Loan Files Collected as Reported by NCUA	200/200 (100%)	200/200 (100%)	85/200 (42.5%)	200/200 (100%)	187/200 (93.5%)	136/200 (68%)	187/200 (93.5%)
Number of Loan File Stipulations Reached / Stipulations Proposed by NCUA	136/138 (98.6%)	136/138 (98.6%)	0/0	140/140 (100%)	0/0	0/0	0/0
Number of Stipulations Reached as to Guideline and Matrix / Stipulations Proposed by NCUA	138/138 (100%)	138/138 (100%)	0/0	140/140 (100%)	0/0	0/0	0/0
Number of Stipulations Proposed by NCUA for Which No Response Has Been Due	0	0	0	0	0	0	0
Number of Sampled Loans for Which Defendant Counter-Proposed a Loan File Stipulation But No Stipulation Yet Reached	0	0	0	0	0	0	0
Number of Sampled Loans for Which Defendant Counter-Proposed a Guideline or Matrix Stipulation But No Stipulation Yet Reached	0	0	0	0	0	0	0